

REMARKS/ARGUMENTS

By this paper, Applicant responds to the Office Action of December 18, 2006 and respectfully requests reconsideration of the application. The shortened statutory period runs through March 18, 2007. Accordingly, this response is timely.

Claims 13, 23, 25, 27, 32, 33, 37, 43, 50-53 and 55-77 are now pending, a total of 35 claims. Claims 3, 23, 25 and 37 are independent.

The consideration of claim 13 in the Office Action is not apparent, and it is believed that claim 13 is patentable, both before and after amendment. The closest discussion appears to be the paragraph spanning from pages 6-7 which expressly states that Gianakouros '901 does not teach or suggest the limitations of claim 13:

Re. Claims 10-16, Gianakouros does not explicitly disclose ... [calculating states based at least in part on] determining the time, day or location of a trade...

The Office Action then apparently falls silent as to the particular language of claim 13, “the time, day, or location of a trade” (and as now amended to “the time of a trade, day of a trade, or location of a trade,” etc.) and apparently makes no showing that this language is met by any reference.

The Office Action mentions a few paragraphs of the Broker.com reference that discuss the salaries and bonuses that brokerage firms pay their employees (which is irrelevant to the commissions that a customer pays for a trade), how customers pay their investment advisors (which is irrelevant to the commission that a customer pays to a broker or trading system for a trade), and average “annual commissions” generated by a broker (which again is irrelevant to the factors on which commissions for specific trades or specific customers are calculated). If these paragraphs are thought to be pertinent, that pertinence is not “apparent,” and a “clear explanation” will need to be provided under 37 C.F.R. § 1.104(c)(2).

Applicant respectfully requests either (a) allowance, or (b) a showing that conforms to 37 C.F.R. § 1.104(c)(2) by including a designation of “the particular part [of all references] relied on as nearly as practicable” (for example, by line number) and that “the pertinence ... be clearly explained” with respect to the language of the specific claims. The indication of keywords from

the reference is certainly helpful, but sometimes ambiguous, e.g., “Schwab account type.” Rule 104 requires both a “designation” and an “explanation,” not merely one or the other.

Applicant also traverses the showing of “motivation to combine,” under 37 C.F.R. § 1.104(d)(2). Applicant hereby “calls for” substantial evidence to support the “motivation” showing, either in the form of a reference or an affidavit of the Examiner’s personal knowledge. Applicant also requests a showing of “motivation to combine” to reach the particular invention claimed, not merely to combine two references in gross. *Crown Operations Int’l v. Solutia, Inc.*, 289 F.3d 1367, 1376, 62 USPQ2d 1917, 1922 (Fed. Cir. 2002) (“There must be a teaching or suggestion within the prior art … to look to particular sources, to select particular elements, and to combine them as combined by the inventor,” emphasis added); *In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000) (“particular findings must be made as to the reason the skilled artisan … would have selected these components for combination in the manner claimed,” emphasis added).

In view of the amendments and remarks, Applicant respectfully submits that the claims are in condition for allowance. Applicant requests that the application be passed to issue in due course. The Examiner is urged to telephone Applicant's undersigned counsel at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance. In the event that any extension of time is required, Applicant petitions for that extension of time required to make this response timely. Kindly charge any additional fee, or credit any surplus, to Deposit Account No. 50-3938, Order No. 01-1016.

Respectfully submitted,

Dated: March 14, 2007

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